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ABH Nature's Products, Inc. and
ABH Pharma, Inc.*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABH NATURE'S PRODUCTS, INC. and
ABH PHARMA, INC.,

Plaintiffs,

-against-

SUPPLEMENT MANUFACTURING PARTNER, INC.
d/b/a SMP NUTRA, FUTURE PACK FULFILLMENT,
INC., JOSPEH IMPERIO, alias FRANK CANTONE,
STEVEN MILANO, WILLIAM CARTWRIGHT and
JOHN DOES NOS. 1-10,

Defendants.

Civil Case No.: 19-cv-05637

**DECLARATION OF
JAHIRUL ISLAM IN
SUPPORT OF MOTION FOR
A SEIZURE ORDER,
TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY
INJUNCTION**

Jahirul Islam, declare under the penalty of perjury as follows:

1. I am the President and CEO of Plaintiffs ABH Nature's Products ("ABH Natures") and ABH Pharma, Inc. ("ABH Pharma" and together with ABH Natures, "ABH") and am fully familiar with the facts stated herein. This Declaration is submitted in support of ABH's motion for a seizure order to reclaim ABH goods and inventory wrongfully converted and withheld from ABH by Defendants Joseph Imperio, alias Frank Cantone ("Imperio"), Supplement Manufacturing Partner, Inc. d/b/a SMP Nutra ("SMP Nutra") and Future Pack Fulfillment, Inc. ("Future Pack"), companies owned and operated by Imperio. The motion also

seeks a temporary restraining order and preliminary injunction against Defendants to enjoin them from infringing on valuable intellectual property and the trademarks of ABH and to enjoin Imperio and Defendant Steven Milano ("Milano") including any entity with which they are associated, including Defendant "SMP Nutra", from competing against ABH, soliciting customers and employees and disclosing confidential information in violation of the clear terms of Confidentiality and Non-Compete agreements executed by Imperio and Milano (the "Restrictive Covenants").

2. I formed ABH Nature's in 1994 to research, develop, manufacture and sell nutraceutical and health supplement products. ABH Nature's along with ABH Pharma operate out of a business location at 131 Heartland Blvd, Edgewood, NY 11717 (the, "ABH Office").

3. In or about March 2016 Imperio, who I learned uses the alias "Frank Cantone", agreed to work with me to form ABH Pharma to act as the sales and marketing arm of ABH Nature's.

4. Imperio and I became owners of ABH Pharma, each owing 50% of the issued and outstanding capital stock of the company.

5. In or about May 2017 ABH Pharma formed Defendant Future Pack to provide fulfillment services to fulfill orders for products manufactured by ABH Nature's and marketed and sold by ABH Pharma. ABH Pharma was the sole shareholder of Future Pack.

6. Imperio, in addition to being a stockholder in ABH Pharma, was employed by ABH Pharma as a consultant.

7. Imperio's responsibilities included operating ABH Pharma and promoting, marketing and selling ABH Nature's products to customers through ABH Pharma.

8. The names “ABH”, “ABH Natures” and “ABH Pharma” and their derivations (the “Marks”) are well known by the public as associated with ABH’s business, which is conducted nationally, including within this District. The Marks have been used continuously in connection with ABH’s business and the sale of its products to its customers.

9. On September 11, 2018 Imperio executed a Restrictive Covenant agreement pursuant to which he agreed not to disclose, take or remove from the possession of ABH any Confidential Information.

10. Imperio further agreed not to compete with ABH’s business for two years following the termination of his employment, not to solicit any employee of ABH for hire, and not to solicit or induce any customer, supplier or other person having a contractual or business relationship with ABH to terminate or alter said relationship or otherwise interfere with such relationship or future relationship. Imperio further agreed to refrain from engaging in any Conflict of Interest with ABH (See, Ex. J, Sections 2-5)¹.

11. On or about September 3, 2018 Milano was hired by ABH as a Senior Account Executive.

12. Milano was responsible for, among other things, promoting and securing the sale of ABH products.

13. On September 7, 2018 Milano executed a Restrictive Covenant pursuant to which he agreed not to disclose, take or remove from the possession of ABH any Confidential Information.

14. Milano further agreed not to compete with Plaintiffs’ business for two years following, the termination of his employment, not to solicit any employee of ABH for hire, and

¹ All “Ex. ____” references refer to the Exhibits annexed to the Declaration of James F. Murphy, Esq. dated October 16, 2019 submitted in support of the motion.

not to solicit or induce any customer, supplier or other person having a contractual or business relationship with ABH to terminate or alter said relationship or otherwise interfere with such relationship or future relationship. Milano further agreed to refrain from engaging in any Conflict of Interest with ABH (Ex. K, Sections 2-5). The Restrictive Covenants are vital to protect ABH's legitimate business interests. Imperio and Milano held high level positions within ABH as key employees and as stated, Imperio was issued fifty percent of the shares in ABH Pharma when it was formed. Milano was a key sales-person and both he and Imperio had access to ABH's most sensitive customer, pricing and sales strategy information.

15. In or about 2016 Defendant Cartwright was hired by ABH as its Chief Marketing Officer.

16. Cartwright was another key employee responsible for, among other things, marketing ABH's products through the ABHNatures.com and ABHPharma.com websites which are owned by ABH. Cartwright also had access to the same confidential ABH information as Imperio and Milano.

17. Within one year of Imperio joining ABH Pharma, the company received increasing complaints that its customer orders were not being fulfilled and its vendors were not being paid by Imperio due to mismanagement by Imperio.

18. In addition, ABH discovered that Imperio opened credit cards without Plaintiffs' knowledge and began to charge massive amounts on the cards for personal expenses completely unrelated to the business of ABH Pharma.

19. In the year 2018 alone, ABH Pharma discovered that Imperio charged over \$252,000.00 in expenses, virtually all of which were personal in nature and completely unrelated to the business of ABH Pharma.

20. Imperio and/or Milano on June 27, 2019 while associated with ABH, and in flagrant violation of their Restrictive Covenants, formed a competing company, Defendant SMP Nutra, to engage in the business of ABH (Ex. M).

21. According to the SMP website <https://smpnutra.com/> SMP Nutra represents itself as, "Your Partner in Manufacturing Amazing Nutraceuticals." SMP also touts its ability to manufacture and market Collagen, Protein, Vitamin, Probiotic and Private Label Supplements, as well as a host of others. Imperio and Milano are in flagrant violation of the Restrictive Covenants that they executed inasmuch as they are engaging in the exact same Business as ABH Nature's and ABH Pharma. (Screenshots of the SMP website which advertises its competing business functions are annexed as Ex. N).

22. In addition to his violation of his Restrictive Covenant, Imperio by 2017 began to act more and more irrationally.

23. Imperio often became violent, verbally abusive, damaged walls and furniture and threatened employees of ABH, including my daughter Sahina, with physical harm.

24. Imperio physically assaulted ABH employee John Riccobono by slapping him in the face in front of multiple witnesses.

25. Imperio also followed ABH employees in his car after the workday from the ABH offices, including my daughter Sahina and me.

26. On the morning of September 4, 2019, Imperio confronted me in the parking lot of ABH and physically threatened me.

27. On or about July 23, 2019, Imperio was asked to no longer come to the offices of ABH and instead, work from the Future Pack office located at 250 Executive Drive in

Edgewood, New York (the “Future Pack Location”), which is about one mile from the ABH business location.

28. On or about the same date, Imperio approached ABH employee Kyle McCurry and offered him money if Mr. McCurry would secretly go through ABH’s personal files to obtain Imperio’s and Milano’s original Restrictive Covenants and provide the originals to him.

29. Mr. McCurry refused to take any money from Imperio but at his request provided the Imperio and Milano original Restrictive Covenants to him.

30. Apparently unbeknownst to Imperio and Milano, ABH maintained copies of the Restrictive Covenant agreements.

31. On or about the same date, Imperio, Milano and Cartwright entered the ABH Office after hours and without permission and began to copy confidential information belonging to ABH.

32. Among the confidential information copied and removed from ABH without permission by Imperio, Milano and Cartwright, was a non-binding draft of a Consent Decree between the United States of America and ABH which contained a proposed injunction to restrain ABH from manufacturing and distributing products unless it took remedial actions specified by the United States (Ex. G). ABH has instituted substantial remedial measures over the last two years designed to improve the manufacturing and labeling of its products.

33. Despite the fact that the Consent Decree is a draft, is of no legal force or effect and is subject to ongoing discussions between the United States and Foley & Lardner LLP, attorneys for ABH, Defendants began distributing the confidential draft Consent Decree and related correspondence to ABH customers, advising that it was in effect and that ABH could no longer do business.

34. Defendants have contacted ABH customers directly to falsely state that ABH is going out of business, cannot continue to operate due to the draft Consent Decree and can no longer provide products and services to such customers.

35. For example, on August 30, 2019 Defendant Imperio emailed ABH customer Wellness Creations as follows:

Based on the attached DOJ letter I see it best for yourself and partners to find a new manufacturer. Again this is strictly for your best interest **in the hopes you do not forward this back to ABH.** As you can see from the attached Department of Justice letter every order placed through ABH is running the risk of recall at any moment. (Ex. B; emphasis added)

36. On or about August 15, 2019, Imperio spoke with Ed Cardenten from ABH customer Vitalitus. LLC and falsely stated that ABH is prohibited from operating by the Food and Drug Administration. (Ex. P)

37. On or about the same date, Imperio on behalf of SMP Nutra and Future Pack made the same or substantially similar statements to ABH customers, Ultra Vulgur Media, LLC, Awakened Alchemy, BMO Yapi Org., Arigen Nutrition, LLC, Vitacore, Mighty Ant Nutrition, Rediston LTD, Liv Body, LLC., Viva Deo, LLC., Healthy Life Creations, Healthy Healing Enterprises, LLC., HA Company D.O.O. and Iron Brothers. These customers and others have been developed at great expense over many years.

38. These statements are false and have injured ABH in its business and have damaged the goodwill and business reputation of ABH. These statements have also denigrated the quality of ABH's products.

39. Due to Defendants' illegal and wrongful actions ABH has been unable to ship product located at Future Pack to its customers including those identified above.

40. Imperio in or about August 2019 advised customers, including Wellness Creations that the products that ABH was manufacturing and marketing were adulterated and mislabeled.

41. The statements were false and were designed to impugn the basic integrity of ABH's business and denigrate the quality of ABH's products and services.

**Imperio, Milano and Cartwright Convert ABH's Confidential Information
and Imperio and Milano Violate their Restrictive Covenants**

42. Between June and July 2019, Defendants Imperio, Milano and/or Cartwright accessed ABH's database, HubSpot, which contains highly confidential information belonging to ABH and without authorization or permission illegally downloaded such information to an external computer.

43. Imperio, Milano and/or Cartwright exported ABH's 26,000 customer names and contacts and created an Excel file which they converted for their own benefit to the detriment of ABH.

44. Imperio, Milano and/or Cartwright also downloaded salary information for every ABH employee and forwarded such confidential information to ABH employees to sabotage ABH, cause internal friction among employees and benefit Defendants at the expense of ABH.

45. Defendants are improperly utilizing ABH's confidential customer list and information, including its trade secrets, to steal customers that have been developed by ABH at great expense over many years.

46. For example, customer Holistic Health Labs emailed Michael Mercurio an employee of ABH on September 17, 2019 regarding problems caused by Imperio. Holistic Health wrote, in pertinent part, "As for ABH, seriously we have no idea what you guys are

doing, first Frank Catone (sic) left the company and starts a new company, sending us an email to ask us to order from them.” (Ex. L).

47. The new company referred to by Holistic Health Labs is Defendant SMP Nutra which Imperio, Milano and/or Cartwright formed on June 27, 2019 while still associated with ABH in violation of the Imperio and Milano Restrictive Covenants (Ex. M).

48. Imperio, Milano and/or Cartwright formed Defendant SMP Nutra in order to directly compete against ABH in violation of the Restrictive Covenants. Imperio, Milano and SMP Nutra operate out of the SMP Nutra/Future Pack Business Location at 250 Executive Drive, Unit L, Edgewood New York. Such location is one mile from ABH’s office located at 131 Heartland Boulevard, Edgewood, New York.

49. On the date that SMP Nutra was formed, Imperio, Milano and Cartwright were shareholders, officers and/or employees of ABH Nature’s and/or ABH Pharma. They continued to be associated with ABH until on or about July 23, 2019 when they were terminated.

50. Imperio, Milano and Cartwright currently, own, operate and/or are employed by SMP Nutra.

51. SMP Nutra’s website sets out the nature of its business in the nutraceutical and health supplement field, which is in direct competition with ABH (Ex. N). Imperio and Milano are flagrantly violating the Restrictive Covenant agreements they executed.

52. In addition, on or about July 23, 2019 Defendant SMP Nutra solicited and extended an offer of employment to ABH employee Kyle McCurry to act as the COO at SMP Nutra (Ex. O).

53. This was in direct violation of the Imperio and Milano Restrictive Covenants which mandated that they shall not solicit any employee of ABH for hire (Ex's. J and K, Section 4.1).

54. In addition, Imperio on behalf of SMP Nutra, recently hired ABH employees David Silvio and Luis Sanchez in direct violation of the Restrictive Covenant Agreement.

Goods and Inventory Wrongfully Converted by SMP Nutra, Future Pack and Imperio

55. In or about July 2018 Defendant Imperio agreed to relinquish and transfer all of his shares in ABH Pharma to me.

56. At or about the same time, ABH agreed to relinquish and transfer all of its shares in Future Pack to Imperio.

57. Despite the fact that ABH transferred its ownership in Future Pack to Imperio in 2018, ABH continued to pay the rent on the SMP Nutra/Future Pack Business Location at 250 Executive Drive, Edgewood, New York.

58. Although not a tenant under the Lease, ABH paid the rent on SMP Nutra/Future Pack Business Location until July 2019.

59. After discontinuing the payment of the monthly rental, SMP Nutra, Future Pack and Imperio refused to release the ABH goods and inventory so that I could move it to ABH. Instead, Imperio refused to release the ABH goods and inventory claiming that the draft Consent Decree prohibits him from releasing the goods.

60. This is false and completely untrue. There is no order or other prohibition in place from any governmental body or agency that would prohibit Imperio from releasing the goods and inventory. His actions have been willful, wanton and designed to mortally damage ABH.

61. To add insult to injury, after refusing to release the ABH goods and inventory, SMP Nutra and/or Future Pack invoiced ABH for storing 432 pallets of ABH's goods and inventory (Ex. D). The invoice and attached list of products conclusively proves and provides probable cause that the ABH goods and inventory (the "ABH Goods") are currently located at the SMP Nutra/Future Pack Business Location at 250 Executive Drive, Edgewood, New York. Although SMP Nutra had no right to charge ABH for storage, ABH agreed to pay the invoice and other amounts demanded by Imperio so long as SMP Nutra and Imperio agreed to immediately release the ABH goods and agree to the other terms of a proposed letter settlement agreement (Ex. E). Imperio refused to sign the letter agreement and he continues to wrongfully retain and convert the ABH Goods.

62. The ABH Goods are chattels and are being wrongfully held by one or more of the Defendants, including SMP Nutra, Future Pack and Imperio. The Plaintiffs are entitled to possession of the ABH Goods by virtue of the facts set forth herein.

63. The instant action to, among other things, recover the ABH Goods, was commenced on October 4, 2019. My attorneys advise that the Complaint along with the motion papers will be served on Defendants and they will be given notice of the Order to Show Cause and instant motion.

64. The aggregate value of the ABH goods stored at SMP Nutra/Future Pack is approximately \$1,500,000.00.

65. Plaintiffs seek the inclusion in the order of seizure of a provision authorizing the sheriff to break open, enter and search for the wrongfully withheld chattels and such chattels constituting the ABH goods are located at the SMP Nutra/Future Pack location at 250 Executive Drive, Suite L, Edgewood, New York.

66. There is no defense to the claim known to Plaintiffs.

67. Future Pack has no ownership or right to the goods and inventory. SMP Nutra, Future Pack and/or Defendants have refused to allow ABH to remove its goods from the SMP Nutra/Future Pack Location claiming that the draft Consent Decree prohibits the goods from being removed.

68. As indicated the Consent Decree is a draft and is of no force of effect and there is no prohibition whatsoever in place which would prevent the ABH Goods from being released.

69. In addition, neither the United States nor any Department or Agency of the United States or State government has prohibited the goods from being released and any claim to the contrary by Defendants is false and designed to damage ABH, its goodwill and business reputation.

70. Remarkably, the attorneys for SMP Nutra prepared a letter to ABH's customers to advise that that the Food and Drug Administration requested that no ABH products be released from storage (Ex. H). This is false and amounts to trade libel. There is no order in effect from the FDA or any other governmental entity prohibiting the release of ABH's goods and inventory.

71. Future Pack and/or Defendants have refused to fulfill orders to ABH customers. ABH has repeatedly requested the release of its goods but Imperio and SMP Nutra/Future Pack have refused and have thus converted, stolen and withheld ABH's goods. I have repeatedly emailed Imperio to request the release of goods for shipments to customers to no avail (Ex. F).

72. Future Pack and/or Defendants have refused to release and ship products to multiple ABH customers including Ultra Vulgur Media, LLC, Awakened Alchemy, BMO Yapi Org., Arigen Nutrition, LLC, Vitacore, Mighty Ant Nutrition, Rediston LTD, Liv Body, LLC.,

Viva Deo, LLC., Healthy Life Creations, Healthy Healing Enterprises, LLC., HA Company D.O.O. and Iron Brothers.

73. On July 23, 2019, Imperio instructed an ABH warehouse employee to divert an \$80,000 order from an ABH vendor, RV Pharma, to the Future Pack business location instead of the ABH warehouse. The Purchase Order for such order (Ex. Q) directed the vendor to ship the goods to the ABH warehouse at 131 Heartland Boulevard, Edgewood, New York. Instead, Imperio diverted the \$80,000.00 to the Future Pack warehouse and has refused to release the goods to ABH or ship them to customers.

74. Imperio's and/or Defendants' actions set forth herein constitute conversion under New York law.

75. On or about July 23, 2019, Imperio had all the locks at the SMP Nutra/Future Pack location at 250 Executive Drive in Edgewood, New York changed to prevent ABH from removing over \$1,500,000.00. in inventory and goods that are stored there for fulfillment to customers.

76. Future Pack and Defendants are holding ABH hostage by refusing to release its stored inventory despite the fact that ABH has a clear and superior right to the inventory.

77. Defendants' failure to release the ABH goods from storage has and will continue to irreparably damage ABH's customer relations and goodwill and unless the Defendants, including SMP Nutra and Future Pack, are ordered to immediately release the ABH Goods and inventory, ABH will experience a permanent loss of existing and prospective business relations and money damages will be insufficient to compensate ABH for the damage to its goodwill and business reputation.

78. Many of the nutraceuticals and health supplements being wrongfully withheld from ABH have expiration dates after which the products cannot be sold. In addition, customers have in many cases paid in full for goods that SMP Nutra, Future Pack and Imperio are refusing to release.

79. ABH customers, including Vitacore, Mighty Ant Nutrition, Rediston, Liv Body, Viva Deo, Healthy Life Creations, Healthy Healing Enterprises and HA Company have ordered, and in certain cases paid for, ABH products that cannot be shipped due to the fact that Defendants are holding the products hostage at the Future Pack facility.

80. The illegal retention of Plaintiffs' goods and inventory by Defendants has and will cause irreparable damage in that ABH's very existence is threatened if it cannot supply its stored goods to its customers. This has and will continue to cause damage to the goodwill and business reputation of ABH.

81. In addition, Defendants' Imperio, Milano and Cartwright owed fiduciary duties and/or duty of loyalty to Plaintiffs by virtue of their fiduciary relationship as owners, officers and/or employees of ABH and breached their fiduciary duties by looting the company, usurping corporate business opportunities and damaging ABH in its business as set forth herein.

Defendants' Wrongful Unfair Competition and False Designation of Origin

82. Defendants have also blatantly infringed on ABH's valuable trademarks and have engaged in outright theft of same.

83. On or about March 4, 2019 Defendants without Plaintiffs' knowledge or consent amended the ownership registration information with respect to the ABH websites "ABHNature.com" and "ABHPharma", which were owned by ABH, to wrongfully reflect that

Defendants Cartwright and SMP Nutra were the registered owners of the sites. A copy of the website registration information statements is annexed as Exhibit I.

84. Such statements falsely show respectively that the Defendants Cartwright and SMP Nature's are the Registrants (Owners) of the ABH Nature.com website. This is false and neither Cartwright nor SMP Nutra ever had any interest whatsoever in the ABH Nature's website.

85. To add insult to injury ABH learned that Imperio, Milano and/or Cartwright tampered with the ABH computer systems and websites to cause any entry of the ABH domain names by anyone, including any customer, to automatically and instantly be forwarded to the SMP Nutra website. This was to create the false impression that SMP Nutra is the owner of or is associated with ABH and its Marks. This is false and represents infringement, unfair competition and false designation of origin.

86. As a result, any current or prospective customer of ABH that entered the ABH domain names would be immediately transferred to the SMP Nutra website controlled by Defendants.

87. This was intentionally done to infringe on Plaintiffs valuable Marks, to usurp corporate opportunities belonging to Defendants, to steal customers and damage Plaintiffs existing and prospective business relations by creating the false impression that SMP Nutra was the owner of the Marks.

88. Plaintiffs have learned that one or more of the Defendants subsequently amended the public ownership information relating to the domain names and Marks by changing the ownership registration information from SMP Nutra to "Registration Private." (Ex. I)

89. This was done to hide the fact that Defendants had surreptitiously changed the ownership registration of the domains and Marks from ABH to SMP Nutra, thereby infringing on Plaintiffs' valuable Marks.

90. On or about August 16, 2019 counsel for Plaintiffs forwarded a letter to Defendants Imperio and Future Pack and demanded, among other things, that Defendants cease and desist from any further use of the ABH Marks and that they release ABH's products from the Future Pack location. (Ex. S).

91. Despite the demand to cease and desist all use of the Marks, Defendants have failed to discontinue the use of the Marks, failed to take other steps required to discontinue the wrongful use of the Marks and have not released the ABH goods from storage.

92. Instead, and despite their status as wrongdoers and trademark infringers, SMP Nutra and Imperio filed a preemptive litigation in the New York Supreme Court against the ABH Companies and me by way of a Summons with Notice (Ex. C).

93. My attorneys have informed me that under the well settled law of New York, as set out in the accompanying memorandum of law, the preemptive action commenced by Plaintiff cannot be deemed a prior action pending since it was filed by way of a Summons with Notice without a formal complaint.

94. As a result of the foregoing, I respectfully request that Plaintiffs' motion be granted in its entirety and that the court issue a Seizure Order, Temporary Restraining Order and Preliminary Injunction as requested herein.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 4, 2019



Jahirul Islam